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Chairman: Mr. Politi ..... (Italy)

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The meeting was called to order at 10.15 a.m.

Agenda item 162: Establishment of the International Criminal Court (PCNICC/2000/L.1/Rev.1 and Add.1 and Add.2, PCNICC/2000/L.3/Rev.1, PCNICC/2000/INF/3 and Add.1 and Add.2)

1. **Mr. Corell** (Under-Secretary-General for Legal Affairs, The Legal Counsel) summarized paragraphs 3, 4, 5, 6 and 8 of General Assembly resolution 54/105 of 9 December 1999 and said that notwithstanding financial constraints, the Secretariat had been able to provide the required services for the two sessions of the Preparatory Commission for the International Criminal Court, held in March and June 2000, and was prepared to do so again during the forthcoming session to be held from 27 November to 8 December 2000. Those services had included assistance to the Commission and its Bureau and the interpretation, translation and reproduction of various documents prepared by delegations, coordinators and the Commission. The proceedings of the fourth and fifth sessions of the Preparatory Commission (PCNICC/2000/L.1/Rev.1 and Add.1 and Add.2 and PCNICC/2000/L.3/Rev.1) and the report of the Preparatory Commission concerning the finalized draft texts of the Rules of Procedure and Evidence and of the Elements of Crimes (PCNICC/2000/INF/3 and Add.1 and Add.2) had been issued in all languages with the linguistic corrections submitted by delegations.

2. With regard to the two trust funds established to facilitate the participation of the least developed countries and other developing countries in the work of the Preparatory Commission, the Secretary-General, in a circular addressed to States, had announced that those interested in making financial contributions should contact the Legal Counsel. The Holy See, Norway and the United Kingdom had made contributions to the trust fund for the least developed countries; as a result, it had been possible to provide round-trip tickets to 21 delegates who had attended the fourth and fifth sessions of the Commission. The Secretariat had received requests for assistance to delegates from least developed countries who wished to attend the forthcoming session. No contributions had been received for the trust fund for other developing countries.

3. Notwithstanding the financial constraints on the Organization and the limited number of staff members in the Codification Division, every effort was being made to expedite preparation of the official records of the Rome Conference.

4. **Mr. Kirsch** (Chairman of the Preparatory Commission for the International Criminal Court) said that the Heads of State and Government who had assembled for the Millennium Summit had emphasized the importance of the Court and that the priority given to that matter by the Secretary-General, the President of the General Assembly, the Legal Counsel and many Governments had contributed to a notable increase in the number of signatures and ratifications of the Rome Statute.

5. The Preparatory Commission had successfully completed the first part of its mandate, including preparation of the draft Rules of Procedure and Evidence and the Elements of Crimes, by the established deadline. It was particularly significant that those instruments had been concluded by general agreement, which had involved difficult compromises for all delegations; that fact demonstrated States' recognition that the Court needed the widest possible support in order to be fully effective.

6. The Commission had considered other important and technically complicated issues such as the definition of the crime of aggression and planning for the next phase of its mandate. Formal and informal meetings had been held, always in a spirit of cooperation; in addition, valuable inter-sessional meetings had been held in Syracuse, Italy, in March 1999, hosted by the International Institute of Higher Studies in Criminal Sciences, and in Mont Tremblant, Canada, in May 2000.

7. The Preparatory Commission would meet once more, from 27 November to 8 December 2000, in order to consider the Relationship Agreement between the Court and the United Nations, the basic principles governing a Headquarters Agreement, the Financial Regulations and Rules, the Agreement on Privileges and Immunities of the Court, a budget for the first financial year and the rules of procedure of the Assembly of States Parties. It would also continue to prepare proposals for a provision on aggression and would discuss ways to enhance the effectiveness and acceptance of the Court.

8. The Bureau of the Preparatory Commission considered that two two-week sessions would be required in 2001 in order to ensure preparation of all

necessary documents before the entry into force of the Statute. In June 2000, the Bureau of the Commission had developed a draft programme of work for the November-December session which would make full use of resources and facilities; in addition, other steps were being taken to ensure that future sessions were organized in as efficient a manner as possible. The Commission would continue to stress the need to establish an effective Court expeditiously, the importance of enhancing universal acceptance of the Court, full respect for the integrity of the Statute and partnership with all States, international organizations and representatives of civil society in order to end impunity and ensure that justice would triumph.

9. **Mr. Alabrune** (France), speaking on behalf of the European Union, Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Malta, Romania, Slovakia and Slovenia, said that the International Criminal Court should be established as soon as possible in order to guarantee effective respect for international humanitarian law and human rights. The Court would be an instrument for dealing with and preventing the worst crimes affecting the international community and would strengthen the primacy of international law, thus contributing to the reign of peace in the world. The Rome Statute gave the Court jurisdiction to try war crimes committed in international and internal armed conflicts, crimes of genocide and crimes against humanity, including massacres of citizens by their own Governments. Above all, it entrusted States with the responsibility for applying international humanitarian law and human rights and sanctioning their violation, it respected the balance among the different legal traditions and insisted on the protection and rights of the victims.

10. The Preparatory Commission had unanimously approved the draft Rules of Procedure and Evidence and the draft Elements of Crimes. Although those documents specified the content of the Statute, they were subordinate to it and should be read in conjunction with it, for they were the product of a willingness to compromise on the part of many delegations.

11. The Preparatory Commission should elaborate the other documents essential to the Court's operation: the financial rules, the administrative agreement between the United Nations and the Court, the principles governing the Headquarters Agreement, the Agreement on Privileges and Immunities and the budget for the first year of operations. A universally acceptable instrument concerning the crime of aggression should also be elaborated. The documents negotiated within the Preparatory Commission did not amend the Rome Statute but merely defined the ways to it and should therefore respect both its letter and its spirit. The European Union was committed to cooperating constructively to find a solution for all the outstanding legal issues.

12. For the Statute to enter into force it would need 60 ratifications. To date, 21 States had ratified it, among them several European Union member States; the rest would soon follow. In all, 114 States had signed the Statute, which was open for signature until the end of the year. The Millennium Assembly had provided a good opportunity for the greatest possible number of States to sign and ratify the Statute. To that end, the European Union offered to share its expertise with States experiencing difficulties in incorporating the Statute into domestic law.

13. After noting that preparations for the establishment of the Court in The Hague in the near future were under way, he thanked all national delegations and many national and international institutions, non-governmental organizations and individuals for their contribution to the framing of the texts adopted by the Preparatory Commission.

14. **Mr. Valdivieso** (Colombia), speaking on behalf of the member States of the Rio Group, reaffirmed the commitment undertaken by the Group in the Cartagena Declaration: adopted in June 2000, to the progressive development of the international law on criminal responsibility for the commission of certain international crimes. The adoption of the Elements of Crimes and the Rules of Procedure and Evidence within the agreed time frame and the fact that 114 States had so far signed the Statute, while 21 — over a third of the number required for its entry into force — had ratified it, provided clear proof of the international community's commitment to the establishment of the International Criminal Court within the shortest possible time. The challenge posed by the impunity of the perpetrators of genocide, crimes against humanity and war crimes, together with the inescapable need to have an instrument that would discourage the commission of such crimes, heightened the need for the establishment of an International Criminal Court.

15. The Rio Group commended the Secretary-General for having identified the Rome Statute as being among the 25 core multilateral instruments whose signature and ratification should be accorded the highest priority by States. The Group pledged to spare no effort to contribute to the elaboration of the instruments necessary for the establishment of the Court. It had participated actively in the first five meetings of the Preparatory Commission and many of its proposals had been included in the texts adopted on 30 June 2000. It would continue to participate in the work of the Preparatory Commission, which should be guided by the commitments given by the international community in the Rome Statute, whose integrity must be preserved at all times.

16. **Mr. Mangoaela** (Lesotho), speaking on behalf of the Southern African Development Community, expressed support for the process of establishing the International Criminal Court. The Rome Statute offered a viable foundation for the establishment of a strong, effective and independent Court. The Community was committed to maintaining the integrity of the Statute and would resist any attempts to introduce substantive amendments. Future documents based on the Statute should not deviate from it. The Community would continue its active participation in the work of the Preparatory Commission in order to attain the goal of early entry into force of the Statute and the establishment of the Court. He urged all States to sign and ratify the Statute as soon as possible. In that context, he noted that most of the members of the Community had signed the Statute and two had ratified it. He commended the Preparatory Commission for having safeguarded the integrity of the Statute and for achieving the adoption by consensus and on schedule of the Elements of Crimes and the Rules of Procedure and Evidence That would facilitate the process of signing and ratifying the Statute and the realization of the goal of its early entry into force.

17. The member States of the Community were engaged in the difficult task of completing their national implementation legislation, to ensure that the International Criminal Court effectively complemented their national jurisdictions. That involved making significant changes to national criminal legislation and procedures, provisions for mutual legal assistance, extradition treaties and human rights laws; for that purpose, constitutional amendments sometimes had to be made, which required technical and legal expertise and financial resources. Those demands would no doubt slow down the process of signing, ratification and entry into force. It was therefore not enough just to urge countries to sign and ratify the Statute: what was needed was a collective effort to cooperate in providing them with technical and financial support and assistance. The Community welcomed the steps already taken to help States in that process and proposed that a trust fund should be set up for that purpose.

18. The remaining issues on the agenda of the Preparatory Commission — the relationship agreement between the Court and the United Nations, the Court's privileges and immunities, the budget for the first financial year and the rules of procedure of the Assembly of States Parties — were also important, as was the need to make progress on the crime of aggression.

19. It must be made easier for as many countries as possible, especially developing countries and the least developed countries, to participate in the Commission's work. Holding two sessions a year, with each session lasting a fortnight, would maximize participation. In addition, financial resources were needed to enable delegations from the developing countries and the least developed countries to take part in the deliberations on the outstanding issues. As far as possible, the concerns of small and medium-sized delegations should be taken into account in scheduling the meetings.

20. The Community hoped that future sessions of the Commission would continue to be characterized by a spirit of cooperation, a businesslike approach and a constructive atmosphere.

21. **Mr. Qu** Wensheng (China) said that the adoption of the Elements of Crimes and the Rules of Procedure and Evidence before the deadline and after a year of hard work provided a solid foundation for the smooth functioning of the International Criminal Court in the future. With regard to the Elements of Crimes, although during the Rome Conference his delegation had expressed reservations on the definition of some crimes, it had shown great flexibility and a constructive spirit during the preparatory process and had joined the consensus, acknowledging the work carried out by the Preparatory Commission and believing that, on the whole, a certain degree of balance had been struck, with the interests of all parties being taken into account. When the document was used as a guide to help the Court interpret and apply the provisions of the

Statute, the latter must be observed in both letter and spirit.

22. With regard to the Rules of Procedure and Evidence, while the incorporation of features from various legal systems had resulted in relatively balanced provisions on the rights and obligations of the parties concerned, his delegation had reservations about the discretionary powers granted to the Court in some matters. If abuses were to be avoided, the Rules of Procedure and Evidence must be consistent with the Statute and, where the two instruments clashed, the Statute must take precedence.

23. In its future work, the Preparatory Commission should continue to observe the letter and spirit of the Statute and respect its stability and integrity. Any amendment to the Statute that violated normal procedure would pose problems for the States that were or were about to become parties to it, and would further undermine the confidence of the countries that already had misgivings about the Statute. The Working Group on the Crime of Aggression had made progress in drafting a consolidated text and provisional questionnaire. The question that attracted the most attention in defining that crime, namely, the role of the Security Council, should be approached cautiously and pragmatically, bearing in mind the need to proceed on a basis of consensus. His delegation was ready to work with the other delegations to reach a pragmatic and satisfactory outcome.

24. **Mr. Scheffer** (United States of America) said that his delegation had participated actively in the negotiations leading to the adoption of the Elements of Crimes and the Rules of Procedure and Evidence, and was pleased to have been able to join the consensus on those matters. The two instruments would stand the test of time because they were consistent with customary international law and due process.

25. It was a matter of concern that the behaviour of some nations still did not live up to the principles reflected in the Rome treaty and that there continued to be some reluctance to address properly the serious violations of international humanitarian law that were taking place. The International Criminal Court would have no jurisdiction over those crimes. Nevertheless, his delegation strongly supported those States that recognized their obligation to bring to justice in their courts those individuals who committed crimes that violated international humanitarian law.

26. If the International Criminal Court was to function efficiently and the United States was to cooperate closely with it, the Preparatory Commission must resolve a fundamental question at its November session. His delegation believed that, unless there was a referral to the Court under article 13 (b) of the Statute, there should be a means to preclude the automatic surrender to the Court of official personnel from a non-party State that acted responsibly in the international community and was willing to exercise, and was capable of exercising, complementarity with respect to its personnel. That would leave the door open for the United States to cooperate with the Court, without harming the fair and efficient functioning of the latter or undermining in any way the integrity of the Rome treaty. A clear articulation of the procedure was needed to give non-party States confidence that the Court would respect their good faith performance. That would encourage non-party States wishing to contribute responsibly to international peace and security, and that confidence in the fairness of the treaty regime would, over time, encourage more Governments to become parties to the treaty.

27. Achieving workable arrangements during the Preparatory Commission talks in November would enable the United States to cooperate with the Court in several areas, and in the future, it might even be able to consider becoming a party to the Rome treaty. If a workable arrangement could not be negotiated at the next Preparatory Commission session, however, it was to be feared that his country would have a much more difficult relationship with the Court. Moreover, a negative result at the next session could have a major impact on the ability of non-party States to participate in certain types of military contingencies, including those with critical humanitarian implications. Overall support for the Court would be diminished, and the legitimacy of certain of its actions would be questioned by the very non-party States that otherwise would find good reason to support it. That need not be the case if reasonable terms were arrived at in the Preparatory Commission.

28. **Mr. Kanu** (Sierra Leone) said that his country had been one of the first to sign and ratify the Rome Statute, thus demonstrating the importance it attributed to the establishment of the Court. Since the Statute had been ratified by over 20 States and 60 ratifications were needed for it to enter into force, his delegation urged States that had not done so to ratify the Statute as

soon as possible, avoiding any direct or indirect changes that might vitiate its content. Had the Court been functioning, it would not have been necessary for the Security Council to adopt resolution 1315 (2000), in which it requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create a special court to try persons who had committed serious violations of international humanitarian law in Sierra Leone.

29. A comprehensive definition of the crime of aggression should be adopted. In any case, Sierra Leone believed that certain activities by some of its neighbouring States constituted the crime of aggression, however it might be defined.

30. With regard to the question of child soldiers, in many countries minors under 18 years of age were tried for crimes. It had been proposed that, as in the case of Rwanda, the special court for Sierra Leone should try minors who had been between 15 and 18 years of age when they committed the alleged crimes, since that was important for the purposes of deterrence and reconciliation. His delegation gave assurances that, if child soldiers were put on trial, they would be treated with dignity, taking into account their age and the desirability of promoting their rehabilitation and reintegration into society.

31. **Mr. Mirzaee-Yengejeh** (Islamic Republic of Iran) said that the Elements of Crimes would add clarity to a number of definitions contained in the Statute of the Court. Together with the Rules of Procedure and Evidence, they would facilitate the work of the judges. Since the Statute was the basic constituent instrument of the future Court, all rules concerning the jurisdiction and functions of the Court, such as the Rules of Procedure and Evidence and the Elements of Crimes, must be in conformity with the Statute. In cases of discrepancy, the Statute should prevail.

32. As a member of the Movement of Non-Aligned Countries, his country attached great importance to the definition of the crime of aggression. Progress on that topic would facilitate the ratification of the Statute by many States and ultimately its universal acceptance. There were two complementary texts that should be considered together: the consolidated text of proposals on the crime of aggression and the preliminary list of possible issues relating to the crime of aggression. Although the second of those texts might help to eliminate discrepancies in regard to certain key aspects of the definition of the crime of aggression, it also dealt with questions outside the mandate of the Preparatory Commission. In accordance with the Rome Statute and resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, the Court should not have separate jurisdiction with regard to the crime of aggression. His delegation favoured a general definition of the crime of aggression, accompanied by a non-exhaustive list of acts; both could be based on General Assembly resolution 3314 (XXIX) of 14 December 1974.

33. With regard to the relationship between the Court and the Security Council, it should be borne in mind that under Article 39 of the Charter of the United Nations the Security Council had primary responsibility for determining the existence of an act of aggression. Therefore, a balanced provision should be adopted to provide for those cases in which the Security Council, for political reasons, did not determine that aggression had been committed. It had been proposed that the General Assembly, the International Court of Justice or the International Criminal Court should assume the role of the Security Council in that regard. Although his delegation could accept the attribution of that function to any of the bodies indicated, it would prefer that the International Criminal Court should determine the existence of an act of aggression when the Security Council failed to do so.

34. **Mr. Vámos-Goldman** (Canada) said that signatures and ratifications of the Statute of the Court were proceeding at a good pace, and the topic had been given special attention in the Millennium Declaration. To help bring the Statute into force as soon as possible, Canada had launched a campaign to promote signature, ratification and implementation of the Statute. In that regard, it should be borne in mind that the Statute did not allow for reservations and that meant that interpretative declarations inconsistent with the Statute would be without effect. Canada, which had ratified the Statute on 7 July 2000, had in December 1999 passed the Crimes against Humanity and War Crimes Act to bring its legislation into line with the provisions of the Statute.

35. The adoption by the Preparatory Commission in June 2000 of the finalized draft texts of the Rules of Procedure and Evidence and the Elements of Crimes

should facilitate the start-up of the Court's operations. The fact that they had been adopted by consensus was an indication of the growing acceptance of the idea of the Court, despite the hesitation of some countries. Canada would continue to try to find acceptable ways to address the legitimate concerns of such countries, without, however, undermining the integrity of the Statute or the effectiveness of the Court. Nevertheless, exemption of any particular State from the jurisdiction of the Court could not be permitted, since it would be incompatible with the Statute and with the fundamental precepts of international law. On the other hand, the Statute itself, the Rules of Procedure and Evidence and the Elements of Crimes would provide safeguards against frivolous prosecutions or other such abuses.

36. **Mr. Hoffmann** (South Africa) said it was vital for the Preparatory Commission to be given adequate time and facilities for it to accomplish its mandate, because there were still important documents to be discussed, including those on the Relationship Agreement between the Court and the United Nations, the basic principles governing the Headquarters Agreement to be negotiated between the Court and the host country, the detailed Financial Regulations and Rules, the Agreement on the Privileges and Immunities of the Court, the budget for the first financial year, the rules of procedure of the Assembly of States Parties and the proposals for defining the crime of aggression and the conditions for the exercise of the Court's competence concerning that crime.

37. South Africa urged States which had not done so to sign the Rome Statute before the end of the year, and to ratify it thereafter. South Africa's national executive had already approved incorporation of the Statute into South African law, and a parliamentary committee had begun to consider ratification, which was expected to take place during the current parliamentary year. Thus South Africa would join the other African States which were already parties to the Statute.

38. Lastly, he was still concerned about the attempts by some States to exempt nationals of certain States from the jurisdictional ambit of the International Criminal Court. South Africa would not support any attempts of that kind, and he hoped that States which still had misgivings about the jurisdiction of the Court would reconsider their positions, sign the Rome Statute before the closing date, and then ratify it.

39. **Mr. Brattskar** (Norway) said the Rome Statute provided for an independent, effective and credible Court with a very wide basis of support. For the first time, there would be written rules of international law on a wide-ranging number of issues, as a result enhancing legal predictability and certainty, and offering reliable safeguards against arbitrary and politically motivated prosecutions. The Statute also provided for important procedural safeguards, for instance to protect sensitive military or other information. Moreover, through the principle of complementarity with national jurisdictions the Court would serve as a safety net in cases where the national authorities were negligent in their judicial procedures.

40. As a result of the 1998 Diplomatic Conference and the adoption during the past year of the draft Rules of Procedure and Evidence and the Elements of Crimes, the goal of establishing an international criminal court was coming closer. The decisions taken by consensus by the Preparatory Commission were another important stage in that process. However, there were still many basic instruments to be considered, such as the detailed Financial Regulations and Rules of the Court, the Relationship Agreement between the Court and the United Nations, the basic principles governing the Headquarters Agreement, the Agreement on the Privileges and Immunities of the Court, the budget for the first year of operation, and a text on the crime of aggression which would be universally acceptable. In the final instance, attaining the goal would depend on a sufficient number of States ratifying the Statute, and so at the current stage every effort must be directed to activating national procedures for signature and ratification. It was encouraging to see that the number of signatures and ratifications was increasing rapidly. He supported the appeal by the Secretary-General of the United Nations to States to sign the Statute before the end of the current year, and reiterated that his country was prepared to share information about its ratification process with all interested States.

41. The important work being carried out by many non-governmental organizations deserved recognition, especially their efforts in disseminating information about the Court and organizing awareness-raising campaigns in order to secure its early establishment.

42. During the Millennium Summit, His Majesty King Harald of Norway had declared that conflicts must be prevented whenever possible, peace

encouraged and the United Nations given power to punish genocide, war crimes and crimes against humanity. Statements in a similar vein had been made by the Prime Minister of Norway at the Summit and by its Minister for Foreign Affairs at the General Assembly debate on 14 September 2000.

The meeting rose at noon.